HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No. 269 of 2005

Rajendra Kumar Sharma
S/o Shri Hari Prasad
R/o Kangra Mandir
Near Harki Pauri Haridwar
District Haridwar .....Applicant

Versus

1. State of Uttaranchal
2. Jitendra Kumar
   S/o Shri Chakkhan Lal
   R/o Ramghat
   P.S. Kotwali Haridwar
   District Haridwar
3. Chandra Dutt Sharma
   S/o Shri Mangal Dutt
   R/o Mohalla Chauptan
   P.S. Kankhal
   District Haridwar
4. Radhey lal
   S/o Shri Puran Chand
   R/o Near Kangra Mandir Har-ki-Pauri
   District Haridwar
5. Jagdish Prasad Chaubey
   S/o Shri Shanta Prasad
   R/o Mohalla Chaupda
   P.S. Khankhal
   District Haridwar .....Respondents

Hon'ble J.C.S. Rawat, J.

1. The petition under section 482 Cr.P.C. has been filed against the orders dated 27.1.2005 passed by the District Judge, Haridwar in criminal revision No.Nil of 2004 and dated 20.10.2004 passed by the Judicial Magistrate, Haridwar in criminal case No.454/1991.

2. Brief facts of the case are that F.I.R. was lodged by the applicant on 11.11.1979 at police station Haridwar stating therein that the applicant is a priest in Kangra Mandir near Har-ki-Pauri, Haridwar and in the night of 10.11.1979 the respondent no.2 to 5 stolen the accounts book, which were in the safe custody of the applicant. Thereafter, the matter was investigated by

the police and ultimately the police submitted a final report in favour of the accused persons (respondent No. 2 to 5) on 14.8.1980 and the said report was accepted by the learned Magistrate on 26.5.1981. In the meantime, the applicant made an application before the learned Magistrate for release of account books (bahis) in favour of the applicant and the learned Magistrate allowed the said application and the account books were released in favour of the applicant vide order dated 19.11.1979. Thereafter, the applicant filed a complaint against the respondent No.2 to 5 and one-Kesho Ram under sections 457, 380, 342, 411 I.P.C. and the learned Magistrate summoned the accused persons. After recording the statement under section 244 Cr.P.C., charges were framed against the respondent No.2 to 5 under section 380, 457, 342, 411 I.P.C. and after framing of the charges the case was taken up for further cross-examination of the applicant. An application was moved by the respondent No.2 to 5 for production of the accounts book of the applicant and the said application was allowed vide order dated 20.10.2004. Feeling aggrieved by the said order, the applicant preferred a revision before the District Judge and the District Judge dismissed the said revision vide its order dated 27.1.2005.

3. Feeling aggrieved by the order of the District Judge, the applicant has come up before this Court.

4. Heard Sri Ramji Srivastava learned counsel for the applicant and Sri Amit Bhatt learned A.G.A.

5. Learned counsel for the applicant contended that the account book of the applicant is not the case property, therefore, the court below cannot compel the applicant to produce the account book before the trial court. Learned counsel for the applicant further

contended that the applicant filed the complaint against the respondent No.2 to 5 and one-Kesho Ram and it is the prosecution who has to prove its case beyond the reasonable doubt by producing the cogent evidence before the court below. It was contended that the trial court cannot compel the applicant to produce the accounts book before the trial court for examination. The learned A.G.A. refuted the contention and contended that the impugned order indicates that the said account books were produced before the trial court while the applicant was examined under section 244 Cr.P.C. ad thereafter the cross-examination was deferred for 246 Cr.P.C.

6. Perusal of the record reveals that the applicant was produced as the prosecution witness before the learned Magistrate under section 244 Cr.P.C. and he also produced the accounts book at the time of evidence and he relied upon the accounts book. When the applicant was produced for the cross-examination under section 246 Cr.P.C. the said account book was not available before the Magistrate as well as to the defence counsel for cross-examination. The said documents were part of the proceedings and the accused had a right to cross-examine the said account book. The orders of the court below clearly reveals that the said documents are required for further cross-examination under section 246 Cr.P.C.

7. Section 244 Cr.P.C. (Evidence for prosecution) provides that (1) When, in any warrant case instituted otherwise than on a police report the accused appears or is brought before a Magistrate, the Magistrate shall proceed to hear the prosecution and **take all such evidence as may be produced in support of the prosecution.** Sub-section 2 provides that the

Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing.

Section 246(4)&(5) is quoted below:-

> (4) If the accused refuses to plead, or does not plead or claims to be tried or if the accused is not convicted under sub-section (3) he shall be required to state, at the commencement of the next hearing of the case or, if the Magistrate for reasons to be recorded in writing so thinks fit, forthwith whether he wishes to cross-examine any, and if so, which, of the witnesses for the prosecution whose evidence has been taken.
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> (5) If he says he does so wish, the witnesses named by him shall recalled and, after cross-examination and re-examination (if any), they shall be discharged.

The Indian Evidence Act defines the word "evidence" that (1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of of fact under inquiry; (2) all document including electronic records produced for the inspection of the Court, such documents are called documentary evidence.

8. It is clear from the perusal of the above proposition of law that if the said account book had been produced before the Magistrate while recording the evidence under section 244 Cr.P.C. and on the basis of that evidence the charge had been framed against the respondent No.2 to 5, it is the duty of the applicant to produce that account books before the trial court so that the respondent No.2 to 5 may cross-examine the applicant on the basis of the said documents. If the applicant fails to produce the said documents, it is duty

of the court to compel the applicant to produce the account book for further cross-examination under section 246 Cr.P.C..

9. In view of the above, I am in agreement with the findings of the learned Magistrate and the Sessions Judge that the said documents are required to be produced before the trial court for further cross-examination. The impugned order does not require any interference.

10. Therefore, the petition lacks merit and is dismissed in-limine.

Dated 09.05.2005 (J.C.S. Rawat, J.)

LSR